

THE HONORABLE BARABARA J. ROTHSTEIN

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PARLER, LLC,

Plaintiff,

vs.

AMAZON WEB SERVICES, INC., and  
AMAZON.COM, INC.,

Defendants.

Case No. 21-cv-00270-BJR

[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR RULE 11  
SANCTIONS

**[PROPOSED] ORDER**

THIS MATTER is before the Court on Plaintiff's Motion for Rule 11 Sanctions. Pursuant to Fed. R. Civ. Proc. 11(c)(6), the Court enters the following findings of fact and conclusions of law:

**FINDINGS OF FACT:**

1. On March 2, 2021, at 4:27 p.m., Parler filed a complaint in the Superior Court of the State of Washington for King County (the "State Complaint") bringing solely Washington state-based claims (the "State Action") against AWS and Amazon.com, Inc. ("Amazon").

2. On March 3, 2021, Amazon filed a Notice of Removal of the State Action, 24 minutes prior to being served by Parler with the complaint in the State Action.

[PROPOSED] ORDER RE: PLAINTIFF'S MOTION  
FOR RULE 11 SANCTIONS  
(Case No. 2:21-cv-00270-BJR) - 1

LAW OFFICES  
**CALFO EAKES LLP**  
1301 SECOND AVENUE, SUITE 2800  
SEATTLE, WASHINGTON 98101-3808  
TEL (206) 407-2200 FAX (206) 407-2224

1           3.       In its Notice of Removal, Amazon alleged that “Parler is a Nevada limited liability  
2 corporation with its principal place of business in Henderson, Nevada,” that “Parler therefore is a  
3 citizen of Nevada,” and that “this case [therefore] satisfies the complete diversity requirement  
4 because Defendants are not citizens of the same state as Parler. . . .”

5           4.       Defendants are citizens of both Washington and Delaware.

6           5.       Parler is a limited liability company.

7           6.       Amazon’s Notice of Removal failed to identify the citizenship of Parler’s members,  
8 as required by LCR 101(f). Instead, Amazon applied the citizenship test for ordinary corporations  
9 in its Notice of Removal, rather than for limited liability companies.

10          7.       Amazon compounded its error in treating Parler’s status as an ordinary corporation  
11 when it cited several standards for determining the citizenship of such a corporation, rather than  
12 an LLC. It cited 28 U.S.C. §1332 for the proposition that “a *corporation* shall be deemed to be a  
13 citizen of every State . . . by which it has been incorporated and of the State . . . where it has its  
14 principal place of business.”

15          8.       Following Amazon’s Notice of Removal, counsel for Parler conferred with counsel  
16 for Amazon to address Amazon’s erroneous assertion of complete diversity, during which counsel  
17 for Amazon acknowledged via email that its Notice of Removal applied the wrong standard for  
18 determining Parler’s citizenship.

19          9.       Since then, Parler has demanded on at least 3 separate occasions via emails on  
20 March 11, 13 and 18, 2021, respectively, that Amazon stipulate to remand.

21          10.       On April 7, 2021, counsel for Parler also wrote a letter to counsel for Amazon  
22 concerning potential Rule 11 sanctions requesting again that Amazon stipulate to a remand or  
23 provide an explanation for its claimed basis of diversity jurisdiction.

24          11.       On April 30, 2021, Parler served Amazon with a draft of its Motion for Rule 11  
25 sanctions. In the draft Rule 11 Motion that was served on Amazon’s counsel, Parler challenged

two of Amazon's contentions, claiming that they violated Rule 11(b): (1) that Parler was not solely a citizen of Nevada, and (2) that complete diversity existed.

12. On May 21, 2021, two and a half months after filing its Notice of Removal, Amazon filed a Motion for Leave to Amend Notice of Removal (Dkt. 33), to remove its erroneous allegation that Parler was a Nevada citizen, instead alleging "on information and belief" that "Parler is neither a citizen of Delaware nor Washington."

13. Parler's proposed amended notice of removal also alleges that, "on information and belief," "complete diversity exists."

14. Amazon's proposed amended notice of removal does not even try to correct its unsupported statement that "complete diversity of citizenship exists."

15. One of Parler's members is NDM Ascendant LLC, a Delaware limited liability company.

16. In turn, NDM Ascendant LLC's citizenship is determined by the citizenship of its members, which include the Rebekah Mercer 2020 Irrevocable Trust (the "Trust"), which was formed under the laws of Delaware.

17. According to Parler's Corporate Disclosure Statement, one of the trustees of the Trust is the J.P. Morgan Trust Company of Delaware, a company headquartered and incorporated in Delaware, making it a citizen of Delaware.

18. Amazon bears the burden to show that it does not share common citizenship with Parler, but it has offered no good faith basis to meet that burden.

19. Amazon has admitted it is not in possession of any facts that support its claim that Parler is not a Delaware Citizen or that there is complete diversity of citizenship. Instead, it has repeatedly requested this court to allow it to conduct jurisdictional discovery.

1                   **CONCLUSIONS OF LAW:**

2                   1.       Parler has complied with the “safe harbor” provision under Fed. R. Civ. Proc.  
3 11(c)(2) by serving Amazon’s counsel with a draft of its motion for Rule 11 Sanctions 21 days  
4 prior to filing its Motion for Rule 11 Sanctions. In response to the safe harbor motion, Amazon  
5 failed to withdraw or appropriately correct the conduct challenged by Parler. *See EB-Bran*  
6 *Productions, Inc. v. Warner Elektra Atlantic, Inc.*, 2006 WL 932085 (E.D. Mich. 2006) (sanctions  
7 awarded after party failed to appropriately correct challenged conduct). Indeed, Amazon’s  
8 proposed amended notice of removal still asserts that there is complete diversity of citizenship  
9 between the parties without a good faith basis and without complying with LCR 101.

10                  2.       Among other things, Amazon failed to appropriately correct its unsupported  
11 conclusion that complete diversity of citizenship exists. Amazon has no objective basis for  
12 meeting its substantial burden of showing that this court has jurisdiction under 28 U.S.C. 1441(b).  
13 Amazon bears the burden of establishing that diversity jurisdiction exists. *See Gaus v. Miles, Inc.*,  
14 980 F.2d 564, 566 (9th Cir. 1992). Federal courts apply a “strong presumption against removal  
15 jurisdiction,” which “means that the defendant always has the burden of establishing that removal  
16 is proper, and that the court resolves all ambiguity in favor of remand to state court.” *Hunter v.*  
17 *Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir. 2009). Amazon’s proposed amended notice of  
18 removal fails to appropriately correct the challenged assertion that “complete diversity exists”  
19 because that conclusion does not have any evidentiary support and that contention is not supported  
20 by existing law. Amazon’s Notice of Removal, and its proposed amended notice of removal, fail  
21 to identify any facts that support its assertion that “complete diversity of jurisdiction exists.”  
22 Amazon’s Notice of Removal and proposed amended notice of removal failed to comply with LCR  
23 101(f), because it does not identify the citizenship of *any* of Parler’s members.

24                  3.       By filing its Notice of Removal in an attempt to take advantage of “snap removal,”  
25 Amazon failed to conduct a reasonable investigation of Parler’s citizenship and applied the wrong

1 test to determine Parler's citizenship. If Amazon had taken the time to complete a reasonable  
 2 inquiry, then it would have been served with Parler's complaint in the State Action, which would  
 3 have completely foreclosed a removal attempt by Amazon.

4 4. The Court holds that Rule 11(b) has been violated because Amazon did not conduct  
 5 a reasonable inquiry prior to filing its notice of removal, Amazon's contention that there is  
 6 complete diversity of citizenship is not warranted by existing law strictly construing removal  
 7 jurisdiction and does not have a good faith factual basis.

8 WHEREFORE, upon consideration of Plaintiff's Motion for Rule 11 Sanctions, and the  
 9 arguments and materials presented in support thereof and in opposition thereto, and it appearing  
 10 proper to do so, it is hereby ORDERED that the motion is GRANTED. The Court sanctions  
 11 Amazon's counsel, Ambika K. Doran, Robert E. Miller, Caesar Kalinowsk and Alonzo Wickers  
 12 IV and the law firm of Davis Wright Tremaine LLP, by awarding all reasonable attorney's fees  
 13 and expenses to Plaintiff in connection with litigating this matter in federal court, including  
 14 opposing Defendants' Notice of Removal, bringing a Motion for Remand, opposing Defendants'  
 15 Motion for Leave to Amend the Notice of Removal, and for seeking and filing the present Motion  
 16 for Rule 11 Sanctions. *See Breckenridge Prop. Fund 2016, LLC v. Eriks*, 2018 WL 4772085, at  
 17 \*4 (W.D. Wash. Oct. 3, 2018). The court finds that such a sanction is sufficient to deter repetition  
 18 of the conduct or comparable conduct by others similarly situated.

19 Plaintiff's counsel is permitted to file, within 14 days of the entry of this order, a fee petition  
 20 to approve an award of all attorney's fees awarded above. Amazon may file a response per this  
 21 Court's normal chambers procedures. In support of its fee petition, Plaintiff's counsel must attach  
 22 the invoices for which it is seeking reimbursement, but Plaintiff's counsel are expressly authorized  
 23 to file a redacted version of any time entry descriptions that reveal any internal matters,  
 24 confidential research topics, strategy, time entries that are irrelevant to this analysis or other  
 25 attorney-client or work product privileged materials. Plaintiff is authorized to file such materials

under seal pursuant to LCR 5(g)(2)(A), without any need to further comply with the provisions of LCR 5(g).

DATED this \_\_\_\_ day of \_\_\_\_\_, 2021.

HONORABLE BARABARA J. ROTHSTEIN  
UNITED STATES DISTRICT JUDGE

*Prepared by:*

**CALFO EAKES LLP**

By s/Angelo J. Calfo

Angelo J. Calfo, WSBA# 27079  
1301 Second Avenue, Suite 2800  
Seattle, WA 98101  
Phone: (206) 407-2200  
Fax: (206) 407-2224  
Email: [angeloc@calfoeakes.com](mailto:angeloc@calfoeakes.com)

**DAVID J. GROESBECK, P.S.**

David J. Groesbeck, WSBA # 24749  
1333 E. Johns Prairie Rd.  
Shelton, WA 98584  
Phone: (509) 747-2800  
Email: [david@groesbecklaw.com](mailto:david@groesbecklaw.com)

**SCHAERR | JAFFE LLP**

Gene C. Schaerr (*pro hac vice to be submitted*)  
H. Christopher Bartolomucci (*pro hac vice to be submitted*)  
1717 K Street NW, Suite 900  
Washington, DC 20006

*Counsel for Plaintiff Parler LLC*